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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

Debtor.

Tax I.D. No. 94-3234914

Case Nos. 19-_____ (____)
19-_____ (____)

Chapter 11

**MOTION OF DEBTORS PURSUANT TO 11
U.S.C. §§ 105(a), 363(b), AND 503(b) AND
FED. R. BANKR. P. 6003 AND 6004 (I) FOR
INTERIM AND FINAL AUTHORITY TO
PAY PREPETITION OBLIGATIONS OWED
TO SHIPPERS, WAREHOUSEMEN, AND
OTHER LIEN CLAIMANTS, AND
(II) GRANTING ADMINISTRATIVE
EXPENSE PRIORITY STATUS FOR
CLAIMS ARISING FROM GOODS
DELIVERED TO THE DEBTORS
POSTPETITION**

Date:
Time:
Place:

In re:

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtor.

Tax I.D. No. 94-0742640

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company (the “**Utility**”), as
2 debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the above-captioned
3 chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion (the “**Motion**”), pursuant to
4 sections 105(a), 363(b), and 503(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and
5 Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), (i) for
6 interim and final authority to pay the prepetition claims (the “**Lien Claims**”) of certain third-party
7 shippers, warehousemen, vendors, and other service providers or contractors that may be permitted to
8 assert statutory or possessory liens against the Debtors’ property and equipment if the Debtors fail to
9 pay the prepetition amounts owed to those parties for their various goods and services (collectively,
10 the “**Lien Claimants**”), and (ii) granting administrative priority status to all undisputed obligations of
11 the Debtors owing to third-party vendors and suppliers arising from the postpetition delivery of goods
12 ordered prior to the Petition Date (as defined below) and authorizing the Debtors to pay such obligations
13 in the ordinary course of business.

14 A proposed form of order granting the relief requested herein on an interim basis is annexed
15 hereto as **Exhibit A** (the “**Proposed Interim Order**”).

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MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal.), and Rule 5011-1(a) of the Bankruptcy Local Rules for the United States District Court for the Northern District of California (the “**Bankruptcy Local Rules**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

On the date hereof (the “**Petition Date**”), the Debtors commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in either of the Chapter 11 Cases.

Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors' businesses and capital structure is set forth in the Declaration of Jason P. Wells, Senior Vice President and Chief Financial Officer of PG&E Corp., in support of the Debtors' chapter 11 petitions and related first day relief, filed contemporaneously herewith (the "**Wells Declaration**").

III. THE LIEN CLAIMANTS

In the ordinary course of their electricity and natural gas businesses, the Debtors routinely transact business with a number of entities that provide goods and services that may be permitted to assert statutory or possessory liens against the Debtors' property and equipment if the Debtors fail to pay for those parties' various goods or services. The Lien Claimants generally fall into the following categories: (i) Shippers, (ii) Warehousemen, and (iii) Maintenance and Repairmen (each as defined below). Each of these categories of Lien Claimants is discussed in further detail below.

As of the Petition Date, the Debtors estimate that they owe approximately \$65,500,000 on account of Lien Claims, of which approximately \$25,800,000 will come due in the first thirty (30) days

1 of the Chapter 11 Cases.¹ A chart outlining the various categories and approximate amounts of the
2 Lien Claims that the Debtors are seeking authority to pay pursuant to this Motion on an interim and
3 final basis is set forth below:

4 5 Categories	6 7 Approx. Amount Seeking to Pay on Interim Basis	8 9 Approx. Amount Seeking to Pay on Final Basis
10 11 Shippers	12 13 \$1,800,000	14 15 \$6,000,000
16 17 Warehouseman	18 19 \$4,800,000	20 21 \$4,800,000
22 23 Maintenance and Repairmen	24 25 \$19,200,000	26 27 \$54,700,000
28 29 Total Approx. Lien Claims	30 31 \$25,800,000	32 33 \$65,500,000

10 *Shippers.* In the ordinary course of business, the Debtors purchase natural gas (the “**Purchased**
11 **Natural Gas**”) from entities operating in all of the major natural gas basins in western North America,
12 including basins in western Canada, the Rocky Mountains, and the southwestern United States.
13 Although the Debtors own and operate over 6,400 miles of transmission pipelines, these pipelines do
14 not connect directly to the Debtors’ natural gas sources. Therefore, it is necessary for the Debtors to
15 rely on third-party transportation service providers (the “**Shippers**”) to transport Purchased Natural
16 Gas from their sources to the Debtors’ transmission pipelines so that the Debtors may deliver natural
17 gas to their residential, commercial, industrial, and agricultural customers and to fuel the Utility’s gas-
18 fired electric generation facilities in northern and central California. The Debtors’ ability to operate in
19 the ordinary course, therefore, depends on their ability to take delivery of and transport Purchased
20 Natural Gas in a timely fashion. Additionally, the Debtors also rely on Shippers for the transportation
21 of piping supplies, valves, replacement parts and other materials, all of which are integral to the day to
22 day operations of their business.

23
24
25 ¹ Concurrently herewith, the Debtors have filed a separate Motion seeking authority to pay, among
26 other things, the prepetition claims of certain entities that are essential to protect the public health and
27 safety and maintain the going-concern value of the Debtors’ enterprise and the integrity of the
28 Debtors’ operations (the “**Operational Integrity Suppliers Motion**”). Although the Debtors have
endeavored to provide accurate figures and calculations herein, there may, in some instances, be
overlap between the amounts sought to be paid herein and the amounts sought to be paid pursuant to
the Operational Integrity Suppliers Motion.

If the Debtors fail to pay their Shippers in a timely manner, the Shippers may seek to assert statutory or possessory liens against Purchased Natural Gas or other materials and property that is in their possession with respect to any delinquent charges, potentially blocking the Debtors' access to the Purchased Natural Gas and such materials and property that is in transport.² Further, in many cases, only one third-party transportation service provider is capable of transporting Purchased Natural Gas or other materials from a given source, leaving the Debtors with no choice but to rely on a particular Shipper. With millions of dollars' worth of Purchased Natural Gas and other materials and property in transit at any given time, the cost of a disruption to the Debtors' operations that could be caused by the Shippers' exercising their rights likely far outweighs the prepetition amounts owed to the Shippers.

The Debtors estimate that the aggregate amount owed to Shippers for services provided during the period before the Petition Date is approximately \$6,000,000, of which the Debtors are requesting authority to pay approximately \$1,800,000 on an interim basis.

Warehousemen. In the ordinary course of business, the Debtors store natural gas that they purchase in various storage facilities (the "**Stored Natural Gas**"). The Debtors procure gas storage capacity as a tool to ensure reliability, in order to inject and withdraw gas to ensure compliance with system requirements, and to balance their position and serve load. Additionally, the Debtors store large diameter pipes used for natural gas pipelines, valves, natural gas replacement pipes and fittings, cables, wiring, and other parts for the electrical grid, and other property in certain third party warehouse facilities. Because the Debtors operate only three storage facilities of their own, all of which have

² For example, section 7307 of California's Commercial Code provides in pertinent part that:

A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.

California Code, Commercial Code – COMM § 7307.

1 limited capacity, they rely on the services of these third-party storage providers
2 (the “**Warehousemen**”).

3 If the Debtors fail to pay their Warehousemen in a timely manner, the Warehousemen may seek
4 to assert statutory or possessory liens against the Debtors’ property that is in their possession;
5 potentially blocking the Debtors’ access to the Stored Natural Gas and other materials that are
6 necessary for the business operations.³ The Debtors estimate that the aggregate amount owed to
7 Warehousemen for services provided during the period before the Petition Date is approximately
8 \$4,800,000, all of which is estimated to come due during the first 30 days of the Chapter 11 Cases.

9 *Maintenance and Repairmen.* Certain of the Lien Claimants provide maintenance and repair
10 services on the Debtors’ vast network of production, transmission, and distribution facilities, including
11 the Debtors’ generation units and gas facilities (the “**Maintenance and Repairmen**”). The
12 Maintenance and Repairmen, among other things, maintain, repair, refurbish, and replace components
13 of the Debtors’ facilities and equipment and provide fuel and parts for the Debtors’ generation units.
14 Many of the Maintenance and Repairmen are not under contract to perform future services, but rather
15 perform work and related services on an order-by-order basis. If the Debtors become delinquent in
16 their payments for such goods provided or services rendered, the Maintenance and Repairmen may
17 assert liens, including mechanics’ liens and materialman’s liens, against the Debtors’ property for the
18 amounts owed. Additionally, those Maintenance and Repairmen that do have contracts with the
19 Debtors may have been granted liens or other interests pursuant to such agreements to secure amounts
20 owed to them under their relevant agreements. Pursuant to section 362(b)(3) of the Bankruptcy Code,
21 the act of perfecting mechanics’ liens, to the extent consistent with section 546(b) of the Bankruptcy
22 Code, is expressly excluded from the automatic stay.⁴ The Debtors estimate that the aggregate amount
23

24 ³ See California Code, Commercial Code – COMM § 7209 (“A warehouse has a lien against the
25 bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof
26 in its possession for charges for storage or transportation, including demurrage and terminal charges,
insurance, labor, or other charges, present or future, in relation to the goods, and for expenses
necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.”)
27

28 ⁴ Under section 546(b) of the Bankruptcy Code, a debtor’s lien avoidance powers “are subject to any
generally applicable law that . . . permits perfection of an interest in property to be effective against

1 owed to Maintenance and Repairmen for goods and services provided during the period before the
2 Petition Date is approximately \$54,700,000, of which the Debtors are requesting authority to pay
3 approximately \$19,200,000 on an interim basis.

4 In addition to having secured claims, if the Debtors are unable to satisfy the Lien Claims as
5 requested herein, the Lien Claimants may refuse to provide critical ongoing goods or services to the
6 Debtors or may seek to enforce their rights and liens on account of such claims. Accordingly, the
7 Debtors seek authority to pay and discharge, on a case-by-case basis, the Lien Claims that the Debtors
8 believe have created, or could give rise to, a lien against the Debtors' property or equipment, regardless
9 of whether such Lien Claimants already have actually perfected their interests.

10 **IV. THE PREPETITION ORDERS**

11 In addition to the relief requested with respect to the Lien Claimants, as of the Petition Date,
12 the Debtors have certain prepetition purchase orders outstanding with various third-party vendors and
13 suppliers (the "**Vendors**") for goods ordered by the Debtors that have not yet been delivered by the
14 Vendors to the Debtors' facilities (the "**Prepetition Orders**"). These Vendors may be concerned that,
15 because the Debtors' obligations under the Prepetition Orders arose prior to the Petition Date, such
16 obligations will be treated as general unsecured claims in the Chapter 11 Cases. Accordingly, certain
17 Vendors may refuse to provide goods purchased (or may recall shipments thereof) pursuant to the
18 Prepetition Orders unless the Debtors issue substitute purchase orders postpetition or obtain an order
19 of the Court confirming that all undisputed obligations of the Debtors arising from the postpetition
20 delivery of goods subject to Prepetition Orders are afforded administrative expense priority status
21 under section 503(b) of the Bankruptcy Code.

22 **V. BASIS FOR RELIEF REQUESTED**

23 To minimize the disruption that the Debtors' business operations will suffer if prepetition
24 obligations owed to Lien Claimants are not paid, the Debtors respectfully requests that the Court
25 authorize the Debtors to pay and honor the Lien Claims pursuant to sections 363(b) and 105(a) of the
26 Bankruptcy Code. Additionally, the Debtors respectfully request that the Court confirm that all
27

28 an entity that acquires rights in such property before the date of perfection." 11 U.S.C. §
546(b)(1)(A).

1 undisputed obligations of the Debtors arising from the postpetition delivery of goods subject to the
2 Prepetition Orders are granted administrative expense priority status pursuant to section 503(b) of the
3 Bankruptcy Code and authorize and confirm that the Debtors may satisfy such obligations in the
4 ordinary course of business.

5 **A. Payment of the Lien Claims is Warranted Under Sections 363(b) and 105(a) of the**
6 **Bankruptcy Code**

7 Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after
8 notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of
9 the estate.” 11 U.S.C. § 363(b)(1). Under section 363 of the Bankruptcy Code, a court may authorize
10 a debtor to pay certain prepetition claims where a sound business purposes exists for doing so. *See In*
11 *re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). The business judgment rule is
12 satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the
13 honest belief that the action taken was in the best interests of the company.” *See, e.g., Official Comm.*
14 *of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656
15 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *see also F.D.I.C. v.*
16 *Castetter*, 184 F.3d 1040, 1043 (9th Cir. 1999) (the business judgment rule “requires directors to
17 perform their duties in good faith and as an ordinarily prudent person in a like circumstance would”).
18 “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision
19 made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.”
20 *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R.
21 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this District have consistently declined to interfere with
22 corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld
23 a board’s decisions as long as such decisions were made in good faith. *Scouler & Co., LLC v. Schwartz*,
24 No. 11-CV-06377 NC, 2012 WL 1502762, at *4 (N.D. Cal. Apr. 23, 2012); *Berg & Berg Enterprises,*
25 *LLC v. Boyle*, 178 Cal. App. 4th 1020, 1046 (2009).

26 The Court may also rely on its equitable powers under section 105 of the Bankruptcy Code to
27 grant the relief requested in this Motion. Section 105(a) of the Bankruptcy Code empowers the Court
28 to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of

1 this title.” 11 U.S.C. § 105(a). Accordingly, the Court may authorize the Debtors to pay the Lien
2 Claims because such relief is necessary for the Debtors to carry out their fiduciary duties under sections
3 1107(a) of the Bankruptcy Code. Under section 1107(a) of the Bankruptcy Code, “the debtor in
4 possession has the same fiduciary duties and liabilities as a Trustee. When the debtor is a corporation,
5 corporate officers and directors are considered to be fiduciaries both to the corporate debtor in
6 possession and to the creditors.” *In re Anchorage Nautical Tours, Inc.*, 145 B.R. 637, 643 (B.A.P. 9th
7 Cir. 1992); *see also In re Curry & Sorensen, Inc.*, 57 B.R. 824, 828 (B.A.P. 9th Cir. 1986) (“[T]he
8 debtor’s directors bear essentially the same fiduciary obligation to creditors and shareholders as would
9 a trustee for a debtor out of possession.”).

10 Numerous courts have acknowledged that payment of prepetition obligations, irrespective of
11 statutory priorities, may be necessary to realize the objectives of the Bankruptcy Code, such as the
12 preservation and enhancement of the value of a debtor’s estate for the benefit of all creditors and other
13 stakeholders. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that
14 courts have approved distributions that are not consistent with ordinary priority rules in instances where
15 significant Code-related objectives, such as enabling a successful reorganization, would be served and
16 listing examples such as “first-day wage orders that allow payment of employees’ prepetition wages,
17 critical vendor orders that allow payment of essential suppliers’ prepetition invoices, and roll-ups that
18 allow lenders who continue financing the debtor to be paid first on their prepetition claims”);
19 *Miltenberger v. Logansport, C&S W.R. Co.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership
20 claim prior to reorganization permitted to prevent “stoppage of the continuance of [crucial] business
21 relations”); *In re Just For Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (allowing payment of prepetition
22 claim because debtor could not survive without maintaining customer relationship); *In re Financial
23 News Network, Inc.* 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991) (payment of prepetition claims allowed
24 if “critical to the debtor’s reorganization”); *In re NVR L.P.*, 147 B.R. 126, 128 (Bankr. E.D. Va. 1992)
25 (holding that “proponent of the payment must show substantial necessity”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (stating that payment must be “necessary to avert
26 a serious threat to the chapter 11 process”).
27
28

1 Although there is a Ninth Circuit decision which fails to recognize the grant of authority given
2 by the Bankruptcy Code to elevate certain pre-petition payments over others, that case is easily
3 distinguishable from these Chapter 11 Cases and the relief sought herein, as the pre-petition payments
4 at issue there were made by the debtor without notice, hearing, or authorization from the Bankruptcy
5 Court. *In Matter of B & W Enterprises, Inc.*, 713 F.2d 534, 535 (9th Cir. 1983). Furthermore, although
6 the B & W court noted that the “necessity of payment” doctrine was established in railroad
7 reorganization cases, *id.* at 535, numerous courts have extended the doctrine beyond the railroad
8 reorganization context. *See, e.g., In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio
9 1988) (“a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code]
10 to authorize payment of prepetition claims where such payment is necessary to permit the greatest
11 likelihood of survival of the debtors and payment of creditors in full or at least proportionately”); *In re Gulf Air*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (finding that payment of prepetition wage and
12 benefit obligations was in the best interest of creditors and necessary for the successful reorganization
13 of the debtor and granting the debtor's motion to pay prepetition employee expenses); *In re Chateaugay Corp.*, 80 B.R. 279, 285 (S.D.N.Y. 1987) (finding that bankruptcy courts have the authority to
14 authorize the debtor to pay certain prepetition claims).

17 Moreover, since *B & W*, the Ninth Circuit has noted in other instances that certain pre-petition
18 payments should be authorized regardless of whether they are priority payments under the Bankruptcy
19 Code. *See In re Adams Apple, Inc.*, 829 F.2d 1484, 1490 (9th Cir. 1987). In that case, in rejecting the
20 appellants' argument that the cross-collateralization clause in a financing agreement violated the
21 “fundamental tenet of bankruptcy law that like creditors must be treated alike,” the Court of Appeals
22 noted that the argument was “flawed because the fundamental tenet conflicts with another fundamental
23 tenet – rehabilitation of debtors, which may supersede the policy of equal treatment.” *Id.* The Ninth
24 Circuit further stated that:

25 [c]ases have permitted unequal treatment of pre-petition debts when necessary for
26 rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital
27 malpractice premiums incurred prior to filing; (iii) debts to providers of unique and
irreplaceable supplies; and (iv) peripheral benefits under labor contracts.

28 *Id.*

1 Numerous Courts within the Ninth Circuit have followed the reasoning of *In re Adams Apple*
2 in holding that the payment of certain pre-petition claims is not categorically barred when the payments
3 promote the rehabilitation of the debtor. *See, e.g., In re Pettit Oil Co.*, No. 13-47285, 2015 WL
4 6684225, at *8 (Bankr. W.D. Wash. Oct. 22, 2015) (citing *In re Adams Apple Inc.* for proposition that
5 it “is permissible to treat prepetition debts unequally when necessary for rehabilitation.”); *Gordon v.*
6 *Hines (In re Hines)*, 147 F.3d 1185, 1191 (9th Cir. 1998) (applying “essentially a doctrine of necessity”
7 to provide for the payment of the fees of debtor's counsel in chapter 7 cases because without this right
8 the “entire [chapter 7] system would suffer a massive breakdown”). Furthermore, courts within this
9 Circuit have granted relief substantially similar to that sought herein. *See, e.g., In re NewZoom, Inc.*,
10 Case No. 15-31141-HB (Bankr. N.D. Cal. Sept. 11, 2015) (approving motion for authority to pay
11 prepetition claims related to shipping and warehousing charges).

12 The relief requested by this Motion represents an exercise of sound business judgment and is
13 necessary to facilitate a successful reorganization. Authorizing the Debtors to pay the Lien Claims is
14 in the best interests of the Debtors, their estates, and all parties in interest. The Lien Claimants provide
15 valuable shipping, warehousing, and maintenance and repair services to the Debtors, and certain of the
16 Lien Claimants currently hold goods and property that are necessary to the Debtors' continued
17 operations. If the Debtors do not pay the Lien Claims, the Shippers and Warehousemen likely will
18 assert possessory liens on the Debtors' property and thereby prevent access to goods necessary to the
19 Debtors' ongoing operations. Similarly, the Maintenance and Repairmen will assert mechanics' and
20 materialman's liens on the Debtors' properties, thereby securing the outstanding amounts they are
21 owed. Under these circumstances, the Debtors believe that having the authority to satisfy these claims
22 not only will avoid any disruptions to their operations and the ability to provide utility service to their
23 customers, but should not prejudice any other parties in interest by reason of the lien rights held by the
24 Lien Claimants.

25 **B. The Obligations Owed Under the Prepetition Orders Are Administrative Priority
26 Claims Under Section 503(b) of the Bankruptcy Code**

27 Pursuant to section 503(b) of the Bankruptcy Code, obligations that arise in connection with
28 the postpetition delivery of goods and services are afforded administrative expense priority because

they benefit the estate postpetition. 11 U.S.C. § 503(b)(1)(A); *see also In re Waste Systems Intern., Inc.*, 280 B.R. 824, 826 (Bankr. D. Del. 2002) (holding that a non-debtor party to a prepetition consulting agreement was entitled to an administrative expense claim equal to the value of any postpetition benefit conferred on the estate); *In re Chateaugay Corp.*, 10 F.3d 944, 956 (2d. Cir. 1993) (holding that an obligation arising from the postpetition performance relating to a prepetition transaction is entitled to administrative expense priority); *In re Palau Corp.*, 139 B.R. 942, 944 (B.A.P. 9th Cir. 1992) (holding that in order for a claim arising from a prepetition services contract to be entitled to administrative expense priority, the claimant must have rendered services postpetition). Accordingly, granting the relief sought herein with respect to the Prepetition Orders merely confirms the priority as to such claims, will not provide the Vendors with any greater priority than they would otherwise be entitled to and will not prejudice any party in interest. Absent such relief, the Debtors may be required to needlessly expend substantial time and effort reissuing the Prepetition Orders to provide the Vendors with assurance of administrative priority. This disruption to the continuous flow of goods and services to the Debtors would negatively impact the Debtors' ability to operate their businesses. Without the support of the Vendors, the Debtors will incur significant costs and lose valuable business relationships, to the detriment of all parties in interest. Therefore, the Court should confirm the administrative expense status of the Prepetition Orders.

C. Banks Should Be Authorized to Receive, Process, Honor, and Pay Checks Issued and Transfers Requested to Pay the Lien Claims and Obligations Owed Under the Prepetition Orders

The Debtors further request that the Court authorize, but not direct, the Banks to receive, process, honor, and pay, to the extent of funds on deposit, any and all checks issued or to be issued and electronic funds transfers requested or to be requested by the Debtors relating to the Lien Claims and the Prepetition Orders. The Debtors also seek authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or transfer requests on account of any prepetition Lien Claims or Prepetition Orders dishonored or rejected as a result of the Chapter 11 Cases.

1 **VI. RESERVATION OF RIGHTS**

2 Nothing contained herein is intended to be or shall be construed as (i) an admission as to the
3 validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in
4 interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract,
5 program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the
6 relief sought herein, any payment made pursuant to the Court's order is not intended to be and should
7 not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to
8 dispute such claim subsequently.

9 **VII. IMMEDIATE ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE 6003**

10 Bankruptcy Rule 6003 provides that, to the extent relief is necessary to avoid immediate and
11 irreparable harm, a Bankruptcy Court may issue an order granting "a motion to use, sell, lease, or
12 otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of
13 a claim that arose before the filing of the petition" before twenty-one (21) days after filing of the
14 petition. As set forth above and in the Wells Declaration, if the Debtors fail to pay the Lien Claims,
15 the Lien Claimants could potentially assert liens against the Debtors' property for the amounts owed
16 on account of the Lien Claims and may refuse to deliver and provide goods and future services to the
17 Debtors. Thus, the Debtors' failure to pay the Lien Claims could severely impair the Debtors' ability
18 to operate their businesses for the benefit of all parties in interest. Accordingly, the Debtors have
19 satisfied the requirements for immediate entry of an order granting the relief requested herein pursuant
20 to Bankruptcy Rule 6003.

21 **VIII. REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

22 The Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and
23 any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). As
24 explained above, the relief requested herein is necessary to avoid immediate and irreparable harm to
25 the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under
26 Bankruptcy Rule 6004(a) and the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent
27 such notice requirements and stay apply.

IX. NOTICE

Notice of this Motion will be provided to (i) the Office of the United States Trustee for Region 17 (Attn: James L. Snyder, Esq. and Timothy Laffredi, Esq.); (ii) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (iii) the Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) the Office of the California Attorney General; (vi) the California Public Utilities Commission; (vii) the Nuclear Regulatory Commission; (viii) the Federal Energy Regulatory Commission; (ix) the Office of the United States Attorney for the Northern District of California; (x) counsel for the agent under the Debtors' proposed debtor in possession financing facilities; (xi) the Banks; and (xii) those persons who have formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: January 29, 2019

WEIL, GOTSHAL & MANGES LLP

KELLER & BENVENUTTI LLP

By: /s/ Tobias S. Keller
Tobias S. Keller

Proposed Attorneys for Debtors and Debtors in Possession